

**Dolin, Thomas & Solomon LLP**  
THE EMPLOYMENT ATTORNEYS

**FILED**

05 DEC 22 AM 10:37

October 3, 2005

**RECEIVED**  
U.S. DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK  
ROCHESTER  
OCT 4, 2005  
**MICHAEL A. TELESKA**  
United States District Judge  
Western District of New York

**VIA HAND DELIVERY**

Honorable Michael A. Telesca  
United States District Court  
Western District of New York  
100 State Street  
Rochester, New York 14614

**Re:   Glewwe, et al v. The Eastman Kodak Company, Civil Action No. 05-cv-06462**  
**Luciano, et al v. The Eastman Kodak Company, Civil Action No. 05-cv-06463**  
**Letouzel, et al v. The Eastman Kodak Company, Civil Action No. 05-cv-06464**

Dear Judge Telesca:

We are in receipt of the Court's approval of the defendants' request for a 30-day extension to answer the complaints in the above-referenced matters.

We respectfully request a corresponding toll on the statute of limitations in these actions.

All three actions allege class-wide violations of the Fair Labor Standards Act ("FLSA"). Unlike virtually every other federal statute, even with class-wide allegations, the statute of limitations continues to run in an FLSA action until a plaintiff affirmatively "opts-in" the action.

Every day that passes means both that all individuals lose recovery for lost wages, and that some plaintiffs will be barred from recovery altogether. Courts treat this problem with the utmost seriousness. As then-District, now Circuit, Judge Sotomayor explained, expedited proceedings in FLSA cases are vital because the employees' claims continue to "die daily" until the plaintiff opts into the action. *Hoffman v. Sbarro, Inc.*, 982 F. Supp. 249, 260 (S.D.N.Y. 1997). Even a 30-day extension is significant given the FLSA's two- or three-year statute of limitations, particularly considering that even once the extension is over, it will take time to provide notice to the plaintiffs.

In this case, plaintiff's counsel had no objection to granting any extension requested by the defendant, provided the purpose of the extension was not to bar recovery by plaintiffs. Plaintiffs' counsel therefore offered to grant the extension, provided the defendant tolled the statute of limitations during the extension.

693 East Avenue, Rochester, New York 14607 tel: 585.272.0540 fax: 585.272.0574  
nthomas@theemploymentattorneys.com • www.theemploymentattorneys.com

Honorable Michael A. Telesca

October 3, 2005

Page 2

Tellingly, the defendant stated it opposed any toll and approached this Court for an extension. (In my experience this position is aggressive and unusual. I cannot remember an FLSA matter in which a defendant has requested an extension to answer a complaint but was unwilling to correspondingly toll the statute of limitations.)

Regardless of defendant's position, when the defendant delays the prosecution of a FLSA matter, this Court is permitted to grant an equitable toll on the statute of limitations to prevent the delay from harming the plaintiffs' rights. *Reich v. Southern New England Telecommunications Corp.*, 892 F.Supp. 389, 404 (D. Conn. 1995) (defendants "should not be allowed to benefit from its delay[.]") *aff'd* 121 F.3d 58 (2d Cir. 1997); *see also Myers v. Copper Cellar Corp.*, 1996 WL 766505 (E.D. Tenn. 1996).

There is no harm in the extension if its only purpose is to provide defense counsel more time to investigate the claims. However, by refusing to toll the statute of limitations, the defendant betrayed its other motive: to cut off the claims of the plaintiffs.

Therefore, the plaintiffs respectfully request that the statute of limitations in these matters be tolled until such time as defendant provides an answer to the complaints so as to protect the rights of all the parties in these actions. If this request meets with your approval, a So Ordered line has been provided below.

Thank you for your courtesies in this matter.

Respectfully submitted,



J. Nelson Thomas

JNT/smt

cc: Peter Walker, Esq. (via electronic mail)

**REQUEST DENIED**  
**SO ORDERED**



Honorable Michael A. Telesca

United States District Court Judge

Dated: October 22, 2005

DEL